under reg 19 of the National Insurance (Contributions) Regulation 1948 to pay £38 arrears of national insurance contributions due from him. The applicant failed to comply with the order and the justices committed him to prison for three months for non-payment of the arrears of contributions. He applied for an order of certiorari to quash the committal order on the ground that inasmuch as the £38 arrears of contribution was enforceable only as a civil debt, the order of committal was bad in law. The Court of Appeal dismissed the application, holding that once the recovery of the sum as a penalty was ordered, the sum could no longer be described as 'enforceable as a civil debt'. Devlin J said (at p 784):

> We have been referred to several decisions on other Acts, but, in my opinion, the question turns entirely on the true construction of para 4. We are not here concerned with the essential character of the sum, but with the mode of its enforcement or recovery. The combined effect of s 54(1) and reg 19(5) is that the sum can be recovered either as a civil debt or as a penalty. But, once its recovery as a penalty has been ordered, I do not think that the sum can any longer be described as 'enforceable as a civil debt' within the meaning of para 4.

And, in relation to an argument on ultra vires (which is irrelevant for our purposes), Devlin J observed, obiter (at pp 784-785):

> Since the Act itself provides ... for its recovery as a civil debt, it is difficult to see what can be meant by its recovery on prosecution except as a penalty ...

In our opinion, therefore, the four orders of the Magistrates' Courts, being orders of a criminal character and recoverable as though they are fines, were not 'judgment(s) or order(s) or payment' for the purposes of O 49.

Our conclusion on this issue in favour of the Bank is sufficient to dispose of the appeal. There is, however, a further ground relied upon by counsel for the Bank on which, in our view, this appeal must also succeed. By s 46 read with s 54 of the Subordinate Courts Act (Cap 321, 1985 Ed), an order of the Magistrate's Court in the exercise of its civil jurisdiction may only be enforced in the High Court upon an application of the person who has obtained the order and upon the Magistrates' Court forwarding the order to the High Court with a request for execution. In the present case, the Board made no such application and no request for execution in the High Court was issued. In our view, therefore, even on the assumption that the relevant orders were orders of the Magistrates' Courts in the exercise of their civil jurisdiction, no execution proceedings could have been instituted in the High Court. Counsel for the Board urged that this non-compliance was a mere irregularity capable of cure – presumably under O 2 of the Rules of the Supreme Court. But O 2 applies only to non-compliance with the requirements of the Rules of the Supreme Court, so that non-compliance with requirements prescribed by statute do not come within that Order. In the present case, the non-compliance with the statutory requirement, going as it does to the root of the enforcement proceedings issued in the High Court, constitutes, in our view, so fundamental a defect in procedure that it renders the entire proceedings in which it occurs, and any order made therein, a nullity.

For these reasons, we allowed the appeal and set aside the garnishee order nisi dated 3 April 1986. In the circumstances, we considered that the appropriate order for costs was that the Bank be entitled to half the costs of the appeal and the court below.

Appeal allowed.

Solicitors: *Lee Bon Leong & Co*; *Tan Rajah & Cheah*; *Richard Ang & Co.*

Reported by *Ng Sheau Jiuan*

Chia Kay Heng & Anor v Chia Kim Siah & Anor

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 1020 OF 1988
CHAN SEK KEONG J
15 DECEMBER 1988

Land Law – Conveyancing – Showing good title – Defendants purchased leasehold from vendor who was previously joint tenant with deceased – Grant of letters of administration to vendor after deceased's death – Defendants gave option to purchase to plaintiffs – Plaintiffs took stand that good title had not been shown until defendants registered grant of letters of administration in Registry of Deeds – Whether proof of death by production of death certificate extract sufficient to show good title

Succession – Grant of letters of administration – Whether necessary to register grant in Registry of Deeds before good title can be shown – Deceased and vendor of leasehold held property as joint tenants – Leasehold sold to defendants – Defendants gave option to purchase to plaintiffs – Whether proof of death by production of death certificate extract sufficient to show good title

Evidence – Death of person – Death certificate or certified extract is primary evidence of person's death – Grant of letters of administration is only secondary evidence

Words and Phrases – 'As evidence of title to such land' – Registration of Deeds Act (Cap 269, 1985 Ed), s 4

The defendants were the leasehold owners of a piece of land ('the said property'). They purchased the said property from the vendor who executed an indenture of assignment in favour of the defendants as joint tenants. The indenture stated that the vendor and C, the deceased, were joint tenants of the property and after the death of C, the vendor had become solely and absolutely entitled to the land.

After the death of C, the vendor and two other persons obtained a grant of letters of administration ('the grant') and

annexed to the grant was the usual schedule issued under s 42(2) of the Estate Duty Act (Cap 96, 1985 Ed) wherein was set out, inter alia, the undivided half-share of the deceased in the said property as an asset of the deceased and also the certification of the Commissioner of Estate Duty that estate duty had been paid on such asset. Subsequently, the defendants granted an option to the plaintiffs to purchase the said property. The plaintiffs exercised the option. Thereafter, there was an exchange of correspondence between the solicitors for the parties on the necessity to register the grant under the Registration of Deeds Act. The solicitors for the plaintiffs took the stand that the defendants would not be able to show a good title until such registration was effected, whilst the defendants' solicitors took the stand that title had passed to the surviving tenant upon the death of the other joint tenant and that proof of such death by the production of an extract of the death certificate was sufficient to show a good title.

As a result of the refusal of the defendants' solicitors to register the grant in the Registry of Deeds, the plaintiffs commenced these proceedings for, inter alia, a declaration that a good title to the said property had not been shown. The plaintiffs' case was that the registration of the grant under the Registration of Deeds Act was necessary on the following grounds: (a) in the absence of such registration, the grant would not be admissible in evidence to prove title and therefore the chain of title between the deceased joint tenant and the surviving joint tenant could not be proved; (b) the mere production of a death certificate was no guarantee that the person named therein is the deceased joint tenant; (c) since estate duty payable on the one-half undivided share of the deceased constituted a first statutory charge on the said interest, evidence must be produced to show that such duty had been paid; and (d) the registration of the grant in the Registry of Deeds will establish a permanent record thereof and will facilitate the investigation of title in subsequent transactions.

Held, dismissing the application:

(1) The plaintiffs have misconstrued the purpose of the grant and the effect of s 4 of the Registration of Deeds Act on it. Where an absolute owner or tenant in common of immovable property dies, the grant of representation to his personal representatives is evidence of the title of such representatives to the land or the undivided share in the land as tenant in common. Where a joint tenant of immovable property dies, the grant of representation to his personal representatives is not evidence of the title of such representatives to the deceased's undivided share since such share has passed to the surviving joint tenant by operation of law. As far as the surviving joint tenant is concerned, he has become the sole legal owner of the property in question by reason of the death of the deceased joint tenant and not by reason of the grant of representation.

(2) It must surely be correct that as a matter of evidence and in the absence of other admissible evidence to the contrary, a death certificate or certified extract thereof is primary evidence of the death of the person named therein. A grant of representation to his estate is at best secondary evidence of the death of the person for whose estate the grant is made. It is therefore wrong for the plaintiffs to insist on the production of the grant as the only reliable proof of the death of the deceased joint tenant.

(3) The second ground that the mere production of a death certificate is no guarantee that the person named therein is the deceased joint tenant is not a valid objection as it applies equally to the grant. It is a question of proof in each case. In a case where, as here, the rule of survivorship operates upon the death of a joint tenant, all that needs to be established is the fact of his death.

(4) The objection relating to payment of estate duty has been met, firstly, by the proviso to s 29(1) of the Estate Duty Act (Cap 96, 1985 Ed); secondly, by the production of the schedule containing a certificate of payment of estate duty and, in any event, by the existence of the certificate of payment of estate duty issued under s 42(1) of the Estate Duty Act. There is no statutory provision or rule of evidence that the schedule by itself is not admissible in evidence to show that estate duty has been paid. There is also no statutory provision or rule of evidence that the grant itself may not be used as evidence that estate duty has been paid, as distinct from it being used as evidence of title.

(5) The plaintiffs' fourth ground of objection is also without substance. The records of the Registry of Births and Deaths and the Registry of the Supreme Court are, in law, as permanent as the Register of Deed in the Registry of Deeds.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 5 of 1989.]

Legislation referred to
Estate Duty Act (Cap 96, 1985 Ed) ss 29(1), 42
Registration of Deeds Act (Cap 269, 1985 Ed) s 4

M Karthigesu for the plaintiffs.
Yeo Piah Chuan for the defendants.

Cur Adv Vult

Chan Sek Keong J: This originating summons raises an esoteric point on conveyancing law and practice.

The defendants were the leasehold owners, holding as joint tenants of the land comprised in Lot 266-28 of Mukim 18 together with the building thereon known as No 14 Ripley Crescent, Serangoon Garden Estate, Singapore (hereinafter called 'the said property'). They purchased the said property from one Cho Cha Kun who as sole legal owner ('the vendor') executed an indenture of assignment dated 14 March 1981 in favour of the defendants as joint tenants. The said indenture contained the following recitals:

> Whereas by an indenture of assignment dated 11 February 1966 (registered in Vol 1593 No 185) the vendor and Chia Kum Lum were possessed or otherwise were entitled to the land and premises described in the schedule hereto as joint tenants for the unexpired residue of the term of 999 years created by the lease in the said Schedule mentioned subject to the yearly rent thereby reserved and to the covenants and conditions therein contained but otherwise free from encumbrances.
>
> And whereas the aforesaid Chia Kum Lum died on the 8th day of August 1976 at No 14, Ripley Crescent, Singapore.
>
> And whereas by operation of law the vendor has become solely and absolutely entitled to and is in possession of all that land and premises described in the Schedule hereto subject to the yearly rent thereby reserved and to the covenants and conditions therein mentioned.

After the death of the said Chia Kum Lum on 8 August 1976, his widow, the surviving joint tenant, viz the vendor, and her son Chia Kim Siah obtained a grant of letters of administration ('the grant') in Probate No 1440 of 1976 on 4 February 1977 which was issued on 4 August 1978. Annexed to the grant was the usual schedule dated 19 April 1978 issued under s 38(2) (now s 42(2) of the Estate Duty Act (Cap 96, 1985 Ed)) wherein was set out, inter alia, the undivided half-share of the deceased in the said property as an asset of the deceased and also the certification of the Commissioner of Estate Duty that estate duty had been paid on such asset.

On 14 July 1988, the defendants granted an option to purchase to the plaintiffs to purchase the said property at the price of $490,000. The plaintiffs exercised the said option. Completion was due on 19 October 1988.

The solicitors for the plaintiffs served on the defendants' solicitors the usual requisitions on title, requisition 15 of which read:

> 15 The property was sold and conveyed to the vendors by Goh Cha Kun as owner solely entitled to the property upon the death of the joint owner Chia Kum Lum. The grant of probate/letters of administration of the will/estate of the deceased joint owner should be registered against the property. Please confirm that this will be done before completion.

The reply of the defendants to this requisition was 'not admitted'.

Thereafter, there was an exchange of correspondence between the solicitors for the parties on the necessity to register the grant under the Registration of Deeds Act. The solicitors for the plaintiffs took the stand that the defendants would not be able to show a good title until such registration was effected, whilst the defendants' solicitors took the stand that title had passed to the surviving tenant upon the death of the other joint tenant and that proof of such death by the production of an extract of the death certificate was sufficient to show a good title.

As a result of the defendants' solicitors refusal to register or undertake to register the grant in the Registration of Deeds Act, the plaintiffs commenced these proceedings on 14 October 1988 for, inter alia, a declaration that a good title to the said property has not been shown.

On the same day, the defendants' solicitors forwarded to the plaintiffs' solicitors a copy of the certified true copy of the death certificate of the deceased joint tenant. On 18 October 1988, the defendants' solicitors, with a view to avoiding 'unnecessary and protracted litigation' offered to produce a certified copy of the grant so that completion could take place on 20 October 1988. The plaintiffs' solicitors rejected the offer and required for the purpose of completion, inter alia, (a) the production of the original sealed copy or certified copy of the grant issued with the usual schedule and certificate of payment under s 42(2) of the Estate Duty Act annexed thereto; and (b) the undertaking of the defendants' solicitors to cause the grant with the schedule and certificate to be registered against the said property.

Completion of the sale and purchase took place after the defendants' solicitors produced to the plaintiffs' solicitors the certified copy of the grant with the said schedule. The grant has not been registered in the Registry of Deeds.

I am now asked to decide which of the two views is correct and to make any consequential orders that may be necessary relating to the costs of this application as well as any liquidated damages arising from the late completion.

The plaintiffs' case is that the registration of the grant under the Registration of Deeds Act is necessary on the following grounds: (a) in the absence of such registration, the grant would not be admissible in evidence to prove title and therefore the chain of title between the deceased joint tenant and the surviving joint tenant cannot be proved; (b) the mere production of a death certificate is no guarantee that the person named therein is the deceased joint tenant; (c) since estate duty payable on the one-half undivided share of the deceased constitutes a first statutory charge on the said interest, evidence must be produced to show that such duty has been paid and (d) the registration of the grant in the Registry of Deeds will establish a permanent record thereof and will facilitate the investigation of title in subsequent transactions.

The defendants' case is that registration of the grant is unnecessary as (a) the title of the surviving joint tenant to the entire legal estate in the said property is not proved by the grant as such but by the fact of death of the deceased joint tenant, whereupon, by operation of law, ie the rule of survivorship, the surviving tenant becomes the sole legal owner and (b) whether or not estate duty has been paid does not prevent the plaintiffs from obtaining an unencumbered estate in the said property by virtue of the proviso to s 29(1) of the Estate Duty Act (Cap 96, 1985 Ed). Section 29(1) provides as follows:

> Unless the estate duty is paid as hereinafter provided, the estate duty payable in respect of any property passing on the death of a deceased person shall be a first charge on all the immovable property of the deceased coming to an executor or being under his control, so far as the duty payable by such executor is concerned, and on the property passing to any other person, so far as the duty payable by such other person is concerned:
>
> Provided that immovable property or any estate or interest therein, is not, as against a purchaser for valuable consideration or a mortgagee, charged with or liable to estate duty after the expiration of 12 years from the happening of the event which gave rise to an immediate claim to such duty.

As to the first ground, it must surely be correct that as a matter of evidence and in the absence of other admissible evidence to the contrary, a death certificate or certified extract thereof is primary evidence of the death of the person named therein. A grant of representation to his estate is at best secondary evidence of the death of the person for whose estate the grant is made. It is therefore wrong for the plaintiffs to insist on the production of the grant as the only reliable proof of the death of the deceased joint tenant. The second ground that the mere production of a death certificate is no guarantee that the person named therein is the deceased joint tenant is not a valid objection as it applies equally to the grant. It is a question of proof in each case. The registration of the grant in the Registry of Deeds will, of course, make it easier for conveyancers to follow and trace the chain of title from the deceased joint tenant to the surviving joint tenant. But, because it is easier so to do is no ground to suggest that there is a legal obligation to do so. In a case where, as here, the rule of survivorship operates upon the death of a joint tenant, all that needs to be established is the fact of his death.

In the instant case, the fact of the death of the deceased joint tenant is recited in the second recital to the indenture dated 14 March 1981. Whilst a recital by itself is not evidence of the truth of the statement contained therein, the truth of that recital may be proved by any evidence admissible in law. Therefore, the issues to be considered in this respect are (a) whether the recital is admissible in evidence and (b) if admissible, whether there is evidence to prove the truth of the recital.

Section 4 of the Registration of Deeds Act (Cap 269, 1985 Ed) renders inadmissible as evidence of title any grant of representation which is not registered under the Act. It provides as follows:

> From and after the commencement of this Act and subject to this Act and any rules made thereunder, all assurances thereafter or theretofore executed or made, and all probates and letters of administration thereafter or theretofore granted, by which any land within Singapore is affected and which have not been registered under the Registration of Deeds Ordinance 1886, may be registered in such manner as is hereinafter directed, and unless so registered shall not be admissible in any court *as evidence of title to such land.* (emphasis added)

The question is evidence of whose title to such land? It must surely be the title of the surviving joint tenant and not that of the deceased joint tenant. Where an absolute owner or a tenant in common of immovable property dies, the grant of representation to his personal representatives is evidence of the title of such representatives to the land or the undivided share in the land as tenant in common. Where a joint tenant of immovable property dies, the grant of representation to his personal representatives is not evidence of the title of such representatives to the deceased's undivided share since such share has passed to the surviving joint tenant by operation of law. Indeed, if the undivided share of the deceased joint tenant is exempt from estate duty, it is not even necessary for the personal representatives to obtain a grant of representation in respect of this interest. As far as the surviving joint tenant is concerned, he has become the sole legal owner of the property in question by reason of the death of the deceased joint tenant and not by reason of the grant of representation. In order to prove his absolute ownership, all he has to do is to prove the death of the deceased joint tenant. He can prove such death by producing a certified death certificate of the deceased or, where a grant of representation to his estate is available, by such a grant.

In my view, the solicitors for the plaintiffs have misconstrued the purpose of the grant and the effect of s 4 of the Registration of Deeds Act on it.

The objection relating to payment of estate duty is a valid objection but it has been met firstly, by the proviso to s 29(1) of the Estate Duty Act (to which the plaintiffs have given no answer), secondly, by the production of the schedule containing a certificate of payment of estate duty and, in any event, by the existence of the certificate of payment of estate duty issued under s 42(1) of the Estate Duty Act. Section 42 of the Estate Duty Act provides as follows:

> 42(1) No grant of representation shall be issued by any court until the Commissioner has certified in a certificate to be filed in court that the estate duty affidavit has been delivered and the estate duty payable in respect of the estate has been paid or that he has allowed payment thereof to be postponed under section 43, and stating the value as assessed by the Commissioner of the property on which estate duty is payable.
>
> (2) A schedule of the property of a deceased person in respect of which estate duty has been paid in such form as may be prescribed or a certificate that payment of estate duty has been postponed or will be made by instalments authenticated by the signature of the Commissioner shall be annexed to the grant of representation. Such schedule shall contain a description of all the property passing on the death of a deceased person whether estate duty is leviable on such property or not.
>
> (3) If, after the issue of a grant of representation in respect of a deceased person, it is discovered that any property passing or deemed to pass on his death has not been included in that schedule then upon the payment of all estate duty, if any, in respect of such property the Commissioner shall cause particulars of the property to be entered in that schedule or shall issue a supplementary schedule.

There is no statutory provision or rule of evidence that the schedule by itself is not admissible in evidence to show that estate duty has been paid. Even if the schedule were an integral part of the grant (which I do not agree is the case), there is no statutory provision or rule of evidence that the grant itself may not be used as evidence

that estate duty has been paid, as distinct from it being used as evidence of title. Furthermore, in addition to the schedule, the Commissioner of Estate Duty had in fact issued a separate certificate of payment of estate duty under s 42(1) of the Act. The original certificate is filed in the Registry of the Supreme Court in Probate No 1440 of 1976.

Thus, when the defendants' solicitors produced the certified grant to the plaintiffs' solicitors for inspection, they were not purporting to produce it as evidence of title but as evidence of the death of the deceased joint tenant and payment of estate duty on his share in the said property which has passed to the surviving joint tenant by operation of law.

The fourth ground of objection is also without substance. The records of the Registry of Births and Deaths and the Registry of the Supreme Court are, in law, as permanent as the Register of Deeds in the Registry of Deeds.

In my view, the defendants have adduced sufficient evidence required by law to prove the chain of title in the said property.

There will accordingly be a declaration that a good title to the said property has been shown and an order that the plaintiffs will pay to the defendants liquidated damages in accordance with the Singapore Law Society Conditions of Sale 1981 for the period from 20 October 1988 to the date of actual completion and also the costs of this application.

Application dismissed.

Solicitors: *Tan Rajah & Cheah* ; *Piah Tan & Partners.*

Reported by *Ng Sheau Jiuan*

Tan Kay Poh v Tan Surida & Anor

HIGH COURT (SINGAPORE) – DIVORCE NO 2256/87
CHAO HICK TIN JC
3 DECEMBER 1988

Family Law – Divorce – Respondent wife committed adultery with co-respondent – Whether petitioner husband entitled to claim damages from co-respondent on account of adultery – English courts no longer grant such damages – Only prevailing rules applicable in England imported into Singapore – Women's Charter (Cap 353, 1985 Ed), s 85 – Matrimonial Proceedings Rules 1981, r 46(3)

Family Law – Divorce – Costs against co-respondent – Claim for – Fact stated in respondent's affidavit that marriage was dead long before adultery – No affidavit in reply filed by petitioner to dispute this fact – Whether co-respondent should be ordered to pay costs

The petitioner, who had earlier petitioned the court for a divorce on the ground that the marriage had irretrievably broken down in that the respondent had committed adultery with the co-respondent, had been granted a decree nisi by the court. The court then ordered that all ancillary matters be adjourned to be heard in chambers.

In the present hearing, there were two main issues to be decided by the court: (a) whether the petitioner is entitled to claim for damages from the co-respondent on account of the adultery committed by the respondent with the co-respondent, and (b) whether the claim for costs against the co-respondent should succeed. With regard to the first issue, the petitioner contended that the court still had the power to award damages under s 85 of the Women's Charter and that r 46(3) of the Matrimonial Proceedings Rules 1981 impliedly preserved the right of petitioner to sue for damages against a co-respondent.

Held, not granting any orders:

(1) Section 85 imports, subject to the express provisions of the Women's Charter, principles on which the English court acts and gives relief. It only imports the prevailing principles or rules applicable in England. By virtue of s 4 of the English Law Reform (Miscellaneous Provisions) Act 1970, English courts now no longer grant damages on a petition for divorce on account of adultery.

(2) Rule 46(3) of the Matrimonial Proceedings Rules 1981 is not a substantive provision. It is a provision to facilitate enforcement of orders made by the court. Whether a petitioning husband may still sue for damages depends on the provisions in the Women's Charter itself. The Rules cannot give such right where none exists under the Charter.

(3) The respondent had stated in her affidavit that the marriage was dead long before the adultery and no affidavit in reply had been filed by the petitioner to dispute what was said by the respondent. Neither had the petitioner made any request for time to file an affidavit in reply. In the circumstances and on the facts, the respondent should not be condemned in costs.

Cases referred to

1 *Scott* v *Scott & Anor* [1957] 1 All ER 63 (refd)
2 *Pritchard* v *Pritchard & Sims* [1966] 3 All ER 601 (refd)
3 *Butterworth* v *Butterworth & Anor* [1920] P 126 (refd)

Legislation referred to

Matrimonial Proceedings Rules 1981 r 46(3)
Women's Charter (Cap 47, 1970 Ed) s 104
Women's Charter (Cap 353, 1985 Ed) ss 85, 88(3)
Law Reform (Miscellaneous Provisions) Act 1970 [UK] s 4